

**Churchill County’s Comments to the
Notice of Revised Proposed Policy for Implementation of Section 180(c)**

I. Policy Statement

1. Policy Statement first paragraph - DOE defines technical assistance to be, “DOE’s specific knowledge, expertise, and existing resources to aid training of public safety officials....”

Comment

The sentence should be revised to state, “....to aid training of public safety officials of appropriate units of local government and Indian Tribes.”

Policy statement goes on to define technical assistance to what appears to be administrative and planning assistance. Has technical assistance been defined outside the policy statement?

2. Policy Statement 4th paragraph- “DOE will work with States and Tribes to evaluate current preparedness for safe and routine transportation and emergency response capability and will provide funding as appropriate to ensure that State, Tribal, and local officials are prepared for OCWRM shipments.”

Comment

DOE’s responsibility is to provide funds to states for training public safety officials of appropriate units of local government. The purpose of Section 180 (c) is not to provide funds to ensure that States are adequately prepared for OCRWM shipments. The law does not include such language. The policy statement should be revised.

3. Policy Statement Last Paragraph states, “ Any deficiency in basic emergency response capability may be addressed through consultation and technical assistance”.

Comment

Would it be correct to say that financial assistance is another means to address deficiencies in basic emergency response? Those deficiencies will largely be found with local emergency response capabilities. The policy statement should be revised to include funding as a means to address deficiencies. Also, the term “may” should be replaced with “shall”.

4. Policy Statement General Comment – “DOE is responsible for providing technical and financial assistance for training of local public safety officials to States and Indian Tribes”.

Specifically, Section 180(c) directs the Secretary to provide technical assistance and funds to State for training public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level.

DOE's responsibility lies with the training of appropriate units of local government and Indian tribes. The emphasis of this notice appears to be on administrative functions tied to the allocation of funds. Instead DOE needs to devise a system whereby appropriate local governments and Indian tribes along transportation routes receive technical assistance and funding for emergency response. Such a responsible is not met by allocating funds to states.

DOE needs to establish performance measures for local emergency preparedness along transportation routes. Without them, how does DOE gauge the level of preparedness for shipments to Yucca Mountain? How can resources be allocated to areas with the most needs? How does DOE ensure that appropriate local governments and Indian tribes are adequately trained and equipped? States must use all or a significant portion of 180 (c) to ensure that public safety officials of appropriate local governments are adequately prepared for OCRWM shipments.

The emphasis of the revised proposed 180 (c) notice currently lies with the distribution of funds to states. This emphasis is inconsistent with the intent of the law which requires training and technical assistance for affected entities. Any distribution of funds should be built around capabilities of appropriate local governments and Indian Tribes along proposed routes.

5. Policy Statement 4th Paragraph – “This revised proposed policy supports the DOE’s OCRWM objective to develop and begin to implementation of a comprehensive national spent fuel transportation plan”.

Comment

With respect to planning efforts, DOE needs to establish specific routes in order to begin implementation of its responsibility associated with Section 180 C.

6. Policy Statement 4th Paragraph - “This revised proposed policy is consistent with DOE’s longstanding commitment to meet or exceed requirements and standards applicable to the transportation of spent nuclear fuel and high-level radioactive waste”.

Comment

DOE has yet to determine what are the basic minimum standards for appropriate local governments and Indian Tribes. The revised policy needs to stipulate the minimum

standards for appropriate local governments and Indian Tribes and begin to focus resources on those areas needing the most assistance. Again, the revised policy should establish minimum emergency response performance measures as a baseline for Yucca Mountain shipments.

7. Policy Statement Last Paragraph – “When necessary or appropriate, training should be consistent with the OSHA awareness or operations levels. Any deficiency in basic emergency response capability may be addressed through consultation and technical assistance”.

Comment

DOE needs to be more definitive with regard to local emergency response standards. The policy statement attempts to suggest appropriate standards for training. Training alone should not be the benchmark, but rather corresponding capabilities and preparedness levels. The revised policy does not define who is responsible to address any deficiencies in basic emergency response capabilities. Who will provide consultation and technical assistance? Deficiencies are also addressed with financial assistance to local governments and Indian Tribes that is the purpose of Section 180 (c).

DOE needs to define specific measures it will take when deficiencies in emergency response are identified. The policy should identify how DOE will determine when such deficiencies will exist. Also, the policy statement makes no reference to emergency medical capabilities.

II. Basis for Cost Estimates/Grant Funding Allocation to States

8. Second Paragraph – “The variable amount of the training grant will be determined through a risk based formula using the factors of population along routes, route miles, number of shipments, and shipping sites”.

Comment

DOE is absolutely wrong here and inconsistent with Homeland Security and Presidential directives none of which are risk based, but instead capabilities based. Population along routes should not be a factor because response capabilities are generally inverse to population. Areas with greater concentrations of population often have significant emergency management capabilities with professional staff. How does DOE justify allocating funds to large urban areas with public safety officials who are already trained to handle hazardous material shipments versus smaller less populated areas without any capabilities?

Similarly, route miles and number of shipments have nothing to do with preparedness and capabilities. Section 180 C is not directly concerned with risk but rather preparedness. The variable grant allocation does not address the basic needs questions.

The formula developed for distribution of grants funds is a politically acceptable formula but does little to provide technical assistance and financial aide to appropriate units of local government and Indian tribes who are in the greatest need for assistance.

Site or point of origin inspections can be done with a trained team of people from one or more states who travel to sites of origin instead of training hundreds of individuals in individual states. If shipment sites are used as an allocation criteria then the number of shipments from the site should be factored into the allocation formula. Also, the formula should be expanded to inspections from the receiving state. The revised policy plan makes no mention of the receiving state.

Also, Section 180 (c) only makes reference to providing funding and technical assistance to states for public safety officials of appropriate units of local government and Indian Tribes. Section 180 (c) does not authorize funding for inspection of waste shipments and does not authorize training for state officials who would most likely inspect the shipments. The revised policy needs to be consistent with the law.

III. Eligibility and Timing of Grants Program

9. Comment

First paragraph DOE will provide grants and technical assistance to jurisdiction with inspection authority. When does Section 180 (c) mention or imply inspection authority as eligibility for funding?

IV. Allowable Activities

10. Allowable Activities Paragraph 2 – “Under Section 180 (c) of the NWPA, DOE shall provide technical and financial assistance to States and Indian tribes”.

Comment

This sentence is incorrect and needs to be replaced with the following, “The Secretary Shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local governments and Indian Tribes”.

11. Allowable Activities-Potential activities for the Assessment and Planning Grant include:

Comment

Bullet 3 should be revised to state, “Planning for how to provide needed training for public safety officials of appropriate local governments and Indian Tribes”.

12. Allowable Activities- General Comment

The allowable activities need to be restated to include activities related to local public safety officials of appropriate units of local government. Inspections are a state function. Section 180 (c) was not intended to provide such support. If DOE supports such activities and the need for such activities suggests that Yucca Mountain waste shipments have not been properly prepared at the generator site for shipment.

13. General Comment

Overall the current policy is a very broad interpretation of the law in that it takes the focus away from providing funds and technical assistance to States for training for public safety officials of appropriate units of local government and Indian Tribes. The current language in the policy puts in place sufficient avenues to channel funding to other agencies and other capabilities outside those Section 180 (c) is explicitly designed to assist. It is very easy to envision the majority of Section 180 (c) funding being allocated to programs, agencies and activities that are only remotely related to the law's original intent. The current policy needs to be revised to replace the emphasis back on emergency response capabilities of affected local governments and Indian Tribes.